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SUPREME COURT OF THE UNITED STATES.

No. 4.

RICHARD L. WATKINS, PLAINTIFF IN ERROR,

VS.

LESSEE OF OLIVER HOLMAN, ET AL.

ERROR TO THE CIRCUIT COURT U. S. FOR ALABAMA. (S. D.)

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S. D. Langtree, print.

UNITED STATES OF AMERICA.

To Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, or John F. Adams and Gayle and Van De Graff, your attornies, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court, to be holden on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth judicial circuit, wherein Richard L. Watkins is plaintiff, and the said Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John McKinley, one of the justices of the Supreme Court of the United States, this seventeenth day of May, A. D. 1838.

J. McKINLEY, *Associate Justice of the Supreme Court of the United States.*

Service acknowledged, May, 1838.

GAYLE & VAN DE GRAFF, and J. F. ADAMS,
Plaintiff's Attornies.

UNITED STATES OF AMERICA.

The President of the United States to the judges of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama:

Because in the record and proceedings, as also in the rendition of judgment, in a plea which is in the said circuit court, before you, wherein Richard L. Watkins is plaintiff, and Oliver Holman and Agnes Howard, an infant under the age of 21 years, by her guardian and next friend, Adonis Howard, are defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court to be then and

In the general court, Indiana Territory, March term, 1803.

RANDOLPH COUNTY, *ss.*

John Holker and Nicholas Victor Muhlberger, who are non-resident in the said Territory, were attached by all and singular their lands and tenements, goods, chattels, and effects, rights and credits, to answer unto John Edgar, in a plea of breach of covenant, and these are pledges to prosecute, to wit, John Doe and Richard Roe; and thereupon the said John Edgar, by John Rice Jones, his attorney, complains, that whereas, by certain articles of agreement, made at Philadelphia, to wit, at Kaskaskia, in the said county of Randolph, on the ninth day of January, in the year of our Lord one thousand seven hundred and eighty-four, between the said John Holker, by the name of John Holker, Esquire, of the city of Rouon, in the kingdom of France, then in the city of Philadelphia, and the said Nicholas Victor Muhlberger, by the name of Nicholas Victor Muhlberger, of the city of Dresden, in the electorate of Saxony, then in the city of Philadelphia, on the one part; and the said John Edgar, by the name of John Edgar, late a merchant in *port* Detroit, but then in the city of Philadelphia, on the other part; one part of which said articles, sealed with the seal of the said John Holker & Nicholas Victor Muhlberger, the said John Edgar bringeth here into court, bearing date the same day and year. It is witnessed that, in consideration of the trust and confidence the said Holker and Muhlberger reposed in the said John Edgar, and for the advancement and bettering their respective estates and fortunes, they, the said parties, had mutually agreed to be jointly concerned in the buying and selling the proper merchandise suitable for the Indian trade, under the (therein and herein) following condition: 1st, That (the said) John Holker and Nicholas Victor Muhlberger should procure each year, in Europe or America, on their credit and with their own funds, the necessary merchandise, (as per list which should be furnished,) to the amount of three thousand pounds sterling, w*hile* should be, by them, or any one of them, or by their correspondents, forwarded to New York or Philadelphia, to such trading house as should be agreed on by the said John Holker and Nicholas Victor Muhlberger. 2dly, That (the said) John Edgar should take charge of the goods when delivered him in New York, and proceed with them to Post Detroit, by the way of Hudson river and Lake Erie, to sell or exchange the said goods for beaver skins and all other furs, to the best of the advantage of the company, and according to the advices and directions which would be transmitted him, from time to time, from the *fund*ing partners in Europe. 3dly, That the said John Edgar should use all possible diligence to make remittances, in the proper season, to the correspondent in New York, of all the furs he could collect or barter for goods. 4thly, That (the said) John Edgar should keep his counting-house and stores at the Post Detroit or Michilimakinak,

according to the instructions he might thereafter receive from the company, where the necessary books for their use should be kept, by such persons as would be appointed for the purpose. 5thly, All expenses incurred by the trade, house and store rent, clerk and servant hire, &c. &c., should be borne at the charge of the company. 6thly, It was agreed that, should the posts of Detroit and Michilimakinak not be garrisoned with American troops in the run of the (then) next ensuing summer, or should the funding partners think it more to their advantage to follow the trade in the Mississippi river, then (the said) John Edgar agreed to go to the Illinois country, by the way of Fort Pitt and the Ohio, and should proceed there as should be thereafter agreed by the parties, for the best of the common interest, and should continue there, if, after information and experience, the company should think more eligible to prosecute that trade, and that of the Mississippi and Missouri rivers. 7thly, That, in all cases, (the said) John Edgar should have, for his trouble, in conducting and managing the (said) above business, one-fourth part of the neat proceeds which might arise from the sale of the goods in the Indian country, and of all the peltry in Europe, the company being to notify him, before his departure, to what houses he should consign the returns, at New York, if he went to the lakes; or to New Orleans, if he went to the Illinois country. 8thly, That the partnership should stand and be in force for the term of three years, or three successive seasons; at the expiration of which time, the said John Edgar engaged to go back, to settle his accounts with his partners, or their attorney or attorneys, if by them required; provided always, and it was thereby agreed, that in case of the death of any of the partners, that company should be dissolved, and the accounts settled within six months after the notification of the same to the surviving partners. Provided also, that, in case the said partners should not think proper to continue the pursuit of that trade, it might be at any time dissolved; but, to that effect, the partner withdrawing should be obliged to give one year's warning previous to the dissolution of the same. Lastly, That in case of disagreement in the settling of the amounts, or any other difficulty which might arise during the partnership, it was thereby agreed that it would be submitted to two arbitrators, one of which to be chosen by each party, and these two to choose the third, by the determination of two of which, the parties mutually agree to abide.

In witness whereof, the parties bound themselves for the execution of the therein and herein above articles, to each other, his heirs, executors, and administrators, and to the others, and their heirs, executors, and administrators, in the penal sum of three thousand pounds sterling money of Great Britain, by the said articles, as by the said articles fully appear. And he, the said John Edgar, in fact saith, that the said posts of Detroit and Michilimakinak, nor either of them, were not garrisoned by the American troops in the

run of the said summer next ensuing the date of the said articles of agreement, and that the said funding partners, to wit, the said John Holker and Nicholas Victor Muhlberger, having thought it more to their advantage to follow the trade in the said articles mentioned, in the Mississippi river, advised and directed the said John Edgar to proceed to the Illinois country, by the way of Fort Pitt and the Ohio; and that, in consequence of such directions, and of the said articles of agreement, he, the said John Edgar, afterwards, to wit, on the day of , in the said year of our Lord, took charge, from New York, of a quantity of goods and merchandise, which they, the said John Holker and Nicholas Victor Muhlberger, furnished and delivered, as and for the amount to be by them procured, according to the said articles, in the first year of the said partnership term of three years, and proceeded, by the said way of Fort Pitt and the Ohio, to the Illinois country, with the same goods, where he arrived on the first day of November, in the same year, to wit, at Kaskaskia in the said county of Randolph. And the said John Edgar, in fact, further saith, that he continued at Kaskaskia, aforesaid, by the advice and direction of them, the said John Holker and Nicholas Victor Muhlberger, from the said time of his arrival there, until the expiration of the said term of three years or seasons; and that, during the said term of three years, the said partnership was not dissolved, by either of the said parties to the said articles, but same continued in full force during all that time. And the said John Edgar, in fact, further saith, that although he, the said John Edgar, hath well and faithfully done and performed all and singular the covenants, grants, and agreements, contained in the said articles, on the part of him, the said John Edgar, to be done and fulfilled; and that, although a list of the necessary merchandise for the said trade, for the two last years of the said partnership term, was furnished them, the said John Holker and Nicholas Victor Muhlberger, afterwards, to wit, on the first day of November, in the year one thousand seven hundred and eighty-five, by the said John Edgar; nevertheless, the said John Holker and Nicholas Victor Muhlberger, nor either of them, did not, in any or either of the last two years of the said term, and during the continuance of the said partnership, procure, either in Europe or America, or elsewhere, on their own credit, and with their or either of their own funds, or otherwise, the necessary merchandise for the partnership trade, to the amount of three thousand pounds sterling, or any part or penny thereof; neither did they, or any of them, or any of their correspondents, forward the same goods, or any part thereof, either to New York or Philadelphia, to any trading house or houses at either of those places, according to the form, force, and effect of the said articles of agreement, on the part of the said John Holker and Nicholas Victor Muhlburger to be done and performed, and of the covenant and agreement of the said John Holker and Nicholas Victor Muhlburger, so made with the said John Edgar, in

that respect, as aforesaid, but neglected so to do, contrary to the form and effect of their said covenant, and of the said articles.— And so the said John Edgar saith, that the said John Holker and Nicholas Victor Muhlburger (although often requested) have not kept, nor hath either of them kept, with the said John Edgar, the said covenant so made with him, the said John Edgar, in that respect as aforesaid, but have broken it, and have hitherto denied, and still deny, to keep the same with the said John Edgar, whereby the said John Edgar saith he is injured, and hath damage to the value of ten thousand dollars, and thereof he bringeth suit, and so forth.

INDIANA TERRITORY.

John Edgar putteth in his place John Rice Jones, his attorney, against John Holker and Nicholas Victor Muhlburger, in a plea of breach of covenant.

And afterwards, to wit, at a court begun and held at Vincennes, on the fourth day of September, in the year 1804, and continued from day to day, by adjournment, until the 7th day and year first aforesaid, came the plaintiff by his counsel, and the defendants being three times solemnly called, came not, but made default; and it being sufficiently proven to the court that notice of the said attachment having issued, had been advertised in a newspaper in the State of Kentucky, and, also, in a newspaper in this Territory for the several times, and in manner and form required by the laws of the Territory; therefore, it is considered by the court, that the plaintiff do recover his damages by reason of the premises; but, because it is unknown to the court what damage the plaintiff hath sustained by occasion of the premises, it is therefore commanded that the sheriff cause a jury to come before the United States' judges, to inquire what damages the plaintiff hath sustained by reason of the premises aforesaid; and thereupon, came a jury, to wit, Daniel McClure, Benjamin Beeckes, Wm. *Curretben*, William Purcill, Samuel Applegate, James Johnson, Frederick Mehl, William Johnson, John Youngman, George Ferguson, William Purriell, and Thomas Johnson, twelve good and lawful men, who being elected, tried, and sworn, well and truly to inquire of damages, upon their oath say that the plaintiff hath sustained damage, by reason of the premises, to eight thousand nine hundred and forty-two dollars and forty cents.

Therefore, it is considered by the court, that the plaintiff do recover against the defendants the sum aforesaid, by the jurors in their verdict in form aforesaid, assessed, together with his costs and charges by him about his suit in that behalf expended; and the said defendant in mercy, &c.

And thereupon, came the said John Edgar, by his attorney aforesaid, and prayed execution for the said damages and costs to be

made to him, and to be levied out of the estates attached. Therefore, at the prayer of the said John Edgar, it is further considered and adjudged, that if the said John Edgar shall find two pledges to be added in the same, to appear to any suit or suits that shall or may be brought by the said defendants within twelve months next ensuing, and to pay unto such defendants all sums of money which, on trial to be had thereon, shall appear to have been received and not justly due and owing to the said John Edgar, together with costs of suit. Whereupon, the said John Edgar then and there found two sufficient pledges, approved of by the said court, to wit, John Rice Jones and William McIntosh, who entered into bond to the said defendants in the penal sum of seventeen thousand, eight hundred and eighty-four dollars and eighty cents, to be filed in the clerk's office, with condition there under written, that the said John Edgar shall appear to any suit or suits that shall or may be brought by such defendants, within the space of twelve months next ensuing; and shall pay unto such defendants all sums of money which, on trial to be had thereon, shall appear to have been received and not justly due and owing to him, the said John Edgar, together with costs of suit: whereupon, it is further adjudged that the said John Edgar have execution for the said damages so assessed, together with his costs, to be levied out of the estates and property so attached; which execution is in the words and figures following, to wit:

INDIANA TERRITORY, *ss.*

The United States to the sheriff of Clarke county, greeting: We command you, that of the following tracts of land, (viz.) No. twenty-two, of five hundred acres; No. forty-five, of five hundred acres; No. one hundred and eighty-one, of five hundred acres; No. one hundred and eighty-seven, of five hundred acres; No. one hundred and thirty-six, of five hundred acres; No. two hundred and twenty-six, of five hundred acres; No. two hundred and four, of five hundred acres; No. one hundred and ninety-seven, of five hundred acres; No. two hundred and forty-one, of five hundred acres; No. two hundred and twenty-seven, of five hundred acres; No. two hundred and twelve, of five hundred acres; No. two hundred and ninety-eight, of five hundred acres; No. one hundred and sixty-four, of five hundred acres; No. two hundred and twenty-nine, of five hundred acres; No. two hundred and fifteen, of five hundred acres; No. one hundred and eighty-eight, of five hundred acres; No. two hundred and ninety-seven, of five hundred acres; No. two hundred and nineteen, of five hundred acres; No. one hundred and twenty-one, of five hundred acres; also, four hundred acres, of No. one hundred and seventy-eight; also, one hundred and twenty acres, part of No. one hundred and ninety-six; situate in the Illinois grant, attached in your hands, by virtue of an attach-

ment in your hands, by virtue of an attachment issued out of our general court, you levy the sum of nine thousand and fourteen dollars one cent and a half, which John Edgar, lately in *in* our general court, recovered against John Holker and *Frederick Augustus* Muhlburger, for his damages which he sustained, as well by reason of the non-performance of certain covenants and agreements, by the said John Holker and *Frederick Augustus* , with the said John Edgar entered into, as for his costs and charges by him about his suit in that behalf expended, whereof the said John Holker and *Frederick Augustus* Muhlburger are convicted, as appears to us of record; and have you that money before our general court, at our court to be holden at Vincennes, on the first Tuesday in April next, to render to the said John Edgar for his damages, costs, and charges aforesaid; and have then there this writ.

Witness the honorable Thomas T. Davis, chief justice in and over said Territory, at Vincennes, the fourth day of [L. S.] February, one thousand eight hundred and four, and of our independence the twenty-ninth.

HE. HURST, *Clk. G. C.*

On which execution is the following return, to wit: "In conformity to the within command, I have advertised and sold the within tracts of land, but could not make the deeds, owing to an error in the date of this writ, and the misnaming of one of the defendants."

DAVIS FLOYD,
Sheriff Clark County.

Afterwards, to wit, on the 2d day of April, A. D. eighteen hundred and five, came the plaintiff, and sued out of the clerk's office of said court his certain execution, with the endorsements thereon, in the words and figures following, to wit:

INDIANA TERRITORY, *ss.*

The United States to the sheriff of Clarke county, greeting: We command you that of the following tracts of land, to wit, number twenty-two, forty-five, one hundred and eighty-one, one hundred and eighty-seven, one hundred and thirty-six, two hundred and twenty-six, two hundred and four, one hundred and ninety-seven, two hundred and forty-one, two hundred and twenty-seven, two hundred and twelve, two hundred and ninety-eight, one hundred and sixty-four, two hundred and twenty-nine, two hundred and fifteen, one hundred and eighty-eight, two hundred and ninety-seven, two hundred and nineteen, and one hundred and ninety-one, of five hundred acres each; also, four hundred acres, of number one hundred and seventy-eight; also, one hundred and twenty acres,

part of No. one hundred and ninety-six; situate in the Illinois grant, and attached in your hands, by virtue of a certain writ of attachment, issued out of our general court of the said Territory, you cause to be made the sum of nine thousand and fourteen dollars and one and one-half cents, which John Edgar, lately in our general court, recovered against John Holker and Nicholas Victor Muhlburger, as well for his damages which he sustained by reason of the breach of a certain covenant by them, the said John Holker and Nicholas Victor Muhlburger, to the same John Edgar lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said John Holker and Nicholas Victor Muhlburger are convicted, as appears to us of record; and have that money before our judges of our said court, at our court to be held at Vincennes, on the first Tuesday in September next, to render to the said John Edgar for his damages, costs, and charges aforesaid; and have then there this writ.

Witness the Hon. Thomas T. Davis, chief justice in and [L. S.] over said Territory, at Vincennes, the 2d day of April, one thousand eight hundred and five, and of our independence the 29th.

HE. HURST, *Clk. G. C.*

The sheriff's return on said writ is in the words following, to wit: "By virtue of the within execution, I sold to John Edgar and John Rice Jones, 5120 acres of the lands within named. I have conveyed the same to them, for $2,560. I also sold to John Harrison 2000 acres, for $1020; 1000 of which I conveyed to him; the other thousand he declines receiving a deed for, and refuses to pay for either: the $3,010 I am ready to satisfy. I also sold to Thomas T. Davis 2000 acres, for 1,020 dollars, which I conveyed and am also ready to satisfy. Also, 500 acres to Peter Bloom, for $250, for which I am also ready to satisfy: making, in the whole, which am ready to satisfy, $4,280.

DAVIS FLOYD,
Sheriff Clark County.

Amended Return.—In addition to the return hereto, I also sold to William Ferguson 500 acres, No. 191, at 50 cents per acre; also, four hundred acres, part of No. 178, at 50 cents per acre; which tracts I have deeded to him. The whole amount ready to satisfy is $4,280.

DAVIS FLOYD, *Shff. C. C.*

I, the undersigned, clerk of the Supreme Court of the State of Indiana, into which court the records and proceedings of the general court of the late Indiana Territory have been transferred by law, do hereby certify that the foregoing is a full, true, and correct copy

of the judgment and proceedings in the cause aforesaid, as the same remain in said court.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, at Corydon, this 8th day of January, A. D. 1823.

H. P. COBURN, *C. S. C.*

STATE OF INDIANA, *sct.*

I, James Scott, presiding judge of the Supreme Court of the State of Indiana aforesaid, do certify that H. P. Coburn, whose signature is annexed to the above certificate, is clerk of the said Supreme Court, and that his attestation is in due form. Given under my hand and seal, this 25th day of April, A. D. 1823.

JAMES SCOTT, [SEAL.]

UNITED STATES OF AMERICA,
7th Circuit Court, Kentucky District, sct.

I, John H. Hanna, clerk of the seventh Circuit Court of the United States of America, in and for the district of Kentucky, do hereby certify that the foregoing 31 pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned, of Doe dem. Holker, &c., against Wm. Lemon, &c., in ejectment, so far as the same has progressed; the same being made out in pursuance to the order in the adjourned questions before herein stated.

In testimony whereof, I have hereunto subscribed my name, [L. S.] and affixed the seal of said court, this 6th day of September, 1832, and in the 57th year of our independence.

JNO. H. HANNA.

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SUPREME COURT OF THE UNITED STATES.

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S. D. Langtree, print.

UNITED STATES OF AMERICA.

To Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, or John F. Adams and Gayle and Van De Graff, your attornies, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court, to be holden on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth judicial circuit, wherein Richard L. Watkins is plaintiff, and the said Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, are defendants in error, to show cause, if any there be, why the judgment in the said writ of error should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable John McKinley, one of the justices of the Supreme Court of the United States, this seventeenth day of May, A. D. 1838.

J. McKINLEY, *Associate Justice of the Supreme Court of the United States.*

Service acknowledged, May, 1838.

GAYLE & VAN DE GRAFF, and J. F. ADAMS,
Plaintiff's Attornies.

UNITED STATES OF AMERICA.

The President of the United States to the judges of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama:

Because in the record and proceedings, as also in the rendition of judgment, in a plea which is in the said circuit court, before you, wherein Richard L. Watkins is plaintiff, and Oliver Holman and Agnes Howard, an infant under the age of 21 years, by her guardian and next friend, Adonis Howard, are defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit, if error there be, the same should be duly corrected, and full and speedy justice be done the parties aforesaid, do command you, if judgment be rendered, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court to be then and

there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further proceedings therein, to correct the error, what of right, according to law and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the said [L. S.] circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk Southern Dist. Alabama.

In the Circuit Court of the United States for the southern district of Alabama:

JOHN DOE, on the demise of Holman and Howard,
vs.
R. L. WATKINS.

Know all men by these presents, that we, R. L. Watkins, Jeremiah Austill and John H. Jones, are held and firmly bound unto Oliver Holman and Agnes Howard, in the penal sum of ten thousand dollars, to be paid to them, their heirs and assigns; for which payment, well and truly to be made, we, and each of us, jointly, severally and firmly, for ourselves, heirs and assigns, bind ourselves, with these presents; sealed with our seals, dated 16th May, 1838.

Whereas Richard L. Watkins has sued out a writ of error, to reverse a judgment in the Circuit Court of the United States for the southern district of Alabama, in which John Doe, on the demise of Oliver Holman and Agnes Howard, are plaintiffs, and said Watkins is defendant.

Now, if said Watkins shall prosecute his writ of error to effect, and, in case he fail to make his plea good, pay and satisfy all such damages and costs as the plaintiffs aforesaid may sustain, then this obligation to be void; else, to have full force and effect.

Signed, sealed and delivered, in presence of

RICHARD L. WATKINS, [L. S.]
JEREMIAH AUSTILL, [L. S.]
JOHN H. JONES. [L. S.]

I, David Files, clerk of the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the above is a true copy of a bond on file in my office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of the said [L. S.] circuit court, this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk Southern Dist. Alabama.

Pleas had before the honorable the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor John McKinley, presiding judge of said court:

Be it remembered, that heretofore, to wit, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and thirty-six, Oliver Holman and Agnes Howard filed their declaration in ejectment, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA.

District Court for the Southern District of Alabama, of the term of the first Monday of May, A. D. 1836.

John Doe, who is a citizen of the State of Massachusetts, by his attorneys, complain of Richard Roe, who is a citizen of the State of Alabama, in custody, &c., in a plea of trespass in ejectment, &c., that whereas Oliver Holman and Agnes Howard, an infant, under the age of 21 years, by her guardian and next friend, Adonis Howard, who are all citizens of the State of Massachusetts, on the first day of January, A. D. 1831, in the county of Mobile and State of Alabama, had demised to the said John Doe a certain lot or parcel of land, situate, lying and being in the county and State of Alabama, together with the storehouses, hereditaments and appurtenances thereunto belonging, and bounded and described as follows, that is to say: beginning at a point on the west side of Water street, in the city of Mobile, twenty feet southwardly from the south-west angle or intersection of St. Francis and Water streets; by a line thence running southwardly along the west side of Water street forty feet to a point; thence, by a line running westwardly, and parallel with St. Francis street, one hundred feet to a point; thence, by a line running northwardly, and parallel with Water street, forty feet to a point; thence, by a line running eastwardly one hundred feet to the place of beginning: to have and to hold the same, to the said John Doe and his assigns, from the first day of January, in the year 1831 aforesaid, for and during, and until

the full end and term of ten years from thence next ensuing, and fully to be completed and ended.

And also, that whereas the said Oliver Holman, on the first day of January, A. D. 1831, at the said county of Mobile, had denied to the said John Doe other lot of land, situate, lying and being in the county of Mobile and State of Alabama, together with the storehouses thereon, and bounded and described as follows: situate on the west side of Water street, in the city of Mobile, between St. Francis and Dauphin streets, and bounded north by a line parallel with St. Francis street, and twenty feet distant therefrom, east by Water street, and west by a line parallel therewith, and one hundred feet distant therefrom, and south by a line parallel with St. Francis street, and sixty feet distant therefrom: to have and to hold the same, to him, the said John Doe, from the first day of January, 1831, aforesaid, for and during, and until the full end and term of ten years thence next ensuing, and fully to be completed and ended.

By virtue of which several demises, the said John Doe entered into the said several lots of land and tenements first and secondly above mentioned, and became and possessed thereof, for the said terms so to him thereof granted; and the said John Doe being thereof possessed, the said Richard Roe afterwards, to wit, on the second day of January, A. D. 1831, with force and armes, &c., entered into the said lands and tenements, firstly and secondly above mentioned, of which the said John Doe was so possessed for the said several terms, which are not yet expired, and ejected the said John Doe from his said several lots of lands and tenements.

And also, whereas, the said Agnes Howard, by her said guardian and next friend, Adonis Howard, on the first day of January, A. D. 1836, at the said county of Mobile and State of Alabama, had demised to the said John Doe other certain lot of land, with the storehouses thereon, situate, lying and being in the said county and State of Alabama, bounded and described as follows: situate on the west side of Water street, in the city of Mobile, between St. Francis and Dauphin streets, and bounded on the north by a line parallel with St. Francis street and twenty feet distant therefrom; south by a line parallel with St. Francis street, and sixty feet distant therefrom; east by Water street, and west by a line parallel with Water street, and one hundred feet therefrom; to have and to hold to him, the said John Doe and his heirs, from the 1st day of January, 1836, aforesaid, for and during the full term of ten years thence next ensuing, and fully to be complete and ended; by virtue of which demise the said John Doe entered into the said tenements, with the appurtenances, and became and was possessed thereof for the said term to him thereof granted; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the second day of January, 1836, with force and arms, entered into the said tenements last mentioned, with the

appurtenances, which the said Agnes, by her guardian, had demised to the said John Doe, for the term last aforesaid, which is not yet expired, and ejected the said John Doe from his said last mentioned premises; and other wrongs and injuries to the said John Doe then and there did, to the damage of the said John Doe, and against the peace of the State of Alabama; whereupon the said John Doe saith that he is injured, and hath sustained damage to the value of thirty thousand dollars, whereof he sues by

J. F. ADAMS—GAYLE & VAN DE GRAFF,
Pro Quei.

Mr. Richard L. Watkins, being a citizen of the State of Alabama.

I am informed that you are in possession of, or claim title to, the premises mentioned in this declaration of ejectment, or some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear at the next term of the District Court of the United States for the Southern District of Alabama, to sit at the city of Mobile, on the second Monday of December next, and then and there to cause yourself to be made defendant in my stead; otherwise I shall *con* suffer judgment to be entered against me, and you will be turned out of possession.

Your loving friend,

RICHARD ROE.

Nov. 30, 1836.

I hereby acknowledge myself bound as security for cost in the above entitled cause.

J. F. ADAMS.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district, at Mobile, on the second Monday of December, in the year of our Lord one thousand eight hundred and thirty-six, before his honor William Crawford, judge of said court, came the said parties, as follows, to wit:

This day came the parties by their attorneys, and plaintiffs, by *by* leave of the court first had and obtained, having amended his declaration by filing additional counts; and the said defendant having confessed lease, entry and ouster, and the defendants pleaded not guilty—Jones for defts.; it is thereupon ordered by the court that the said cause be continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven, before his honor, William Crawford, judge of said court, by consent of parties, it was ordered by the court that this cause be continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for said district, at Mobile, on the second Monday of October, in the year of our Lord one thousand eight hundred and thirty-seven, before his honor, William Crawford, judge of said court, it was ordered by the court that this cause be continued.

And afterwards, to wit, at a term of the court aforesaid, begun and held in and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor John McKinley, presiding judge of said court, came the said parties as follows, to wit:

This day came the parties by their attornies, whereupon also came the following jury, to wit: Edward Chidsey, Amasa Hayden, F. F. Swan, Edward O. Jones, Samuel Warren, Thomas St. John, Samuel Dudley, John Byrnes, Jr., Isaac Isaacs, Henderson Kinney, Frederick V. Cluis, and Peter Gilchrist, twelve good and lawful men, who, being elected, tried and sworn, upon their oath do say, that the said Richard L. Watkins is guilty of unlawfully withholding the within described premises from the said Oliver Holman and Agnes Howard; and that the said Oliver and Agnes are well entitled to hold the same in fee. It is therefore considered by the court, that the said Oliver Holman and Agnes Howard do recover of and from the said Richard L. Watkins, the possession of the aforesaid premises, according to the verdict of the jury aforesaid, and also their costs and charges in this behalf expended. On motion of said plaintiffs, it is ordered by the court that a writ of possession issue.

Whereupon, during the term aforesaid, at the trial of said cause, and before the same was submitted to the jury aforesaid, the said defendant, by his counsel, tendered to his honor, the presiding judge, a bill of exceptions, which was signed and sealed, and which said bill and the exhibits thereto annexed, are in the words and figures following, to wit:

CIRCUIT COURT, U. S., *Southern District of Alabama.*

DOE, on the demise of HOLMAN & HOWARD,
vs.
R. L. WATKINS.

On the trial of this cause, the defendants offered to read from a volume of the American State papers, purporting to be documents, legislative and executive, of the Congress of the U. S., selected and edited under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives, the report of the commissioners of the district east of Pearl river, appointed under the authority of an act entitled an act for ascertaining the title and claims to lands in that part of Louisiana which lies east of the river Mississippi and island of

Orleans, to the Secretary of the Treasury, with a view of showing that the title in question was confirmed to the heirs of one Simon Landry, under the act of Congress, confirming the said commissioners' report. The court decided that the book aforesaid could not be used for that purpose, and that better evidence of the contents of said report could have been produced, and the same was excluded; to which decision of the court the defendant, by his counsel, excepts, and prays the court to sign and seal this bill of exceptions.

J. McKINLEY. [L. S.]

JOHN DOE, on the demise of HOLMAN and HOWARD,
vs.
R. L. WATKINS.

Upon the trial of this cause, the *defendants*, (plt'ffs,) to enable them to read copies of deeds in evidence, which had been recorded in the office of the Clerk of the County Court of Mobile County, being the deeds of Lucy Landry to McKinsie & Swett, McKinsie & Swett to Oliver Holman, produced a deposition of Sarah Holman, wife and administratrix of Oliver Holman, who deposes as follows:

I was the sole administratrix of my late husband, Oliver Holman. I recollect distinctly that there was a deed or deeds of real estate, in Mobile, to my late husband, from a person or persons by the name of Dandry or Andry; that I have made diligent search among my husband's papers, but can find no such deed or deeds. Mr. Charles Brown had access to my husband's papers, and may have carried this deed or deeds with him. I presume he has. Mr. Brown has left the country; is a fugitive from justice, having committed forgeries to a large amount. I have seen no such deed or deeds since Mr. Brown left Boston. They offered further the evidence of a Mr. Wood, who testified, that he had searched among McKinsie's papers; that he could not find a deed; that he did not know who lived longest, McKinsie or Swett; that McKinsie died in 1822; that he (Wood) married McKinsie's daughter, three years ago; that there are other children of McKinsie's, but they have none of his papers. He is satisfied that the deed is not among McKinsie's papers. Mr. Adams testified that he had seen a son of Swett, now deceased, who had come out to Mobile to look after some lands, who told him the deed could not be found, and that he thought it might have been burnt among a trunk of papers destroyed by fire, some years ago; does not believe it can be found, or is in the power of the party to produce. He further stated that he had written to the plaintiffs' lessor, Oliver Holman, who answered that he had sent him all the papers that he had; and that he wrote to Sarah Holman for this particular deed, but had not been able to get it; and that he believes that the deed has been surreptitiously

abstracted, lost, and *in it* in the power of Mrs. Holman or the plaintiffs to produce them.

Mr. Gage testified, that he had, in the last summer, been requested by the plaintiffs' counsel, to call for the deed in Boston; that he went with Oliver Holman to Sarah Holman, who produced a bundle of papers belonging to her late husband, saying that they were all she had; that he examined those, and no deed of the kind sought for was to be found.

The court admitted the copies to be read in evidence, upon this proof, to which the defendants' counsel excepts, and prays the court to sign and seal this bill of exception.

J. McKINLEY. [L. S.]

JOHN DOE on the demise of HOLMAN & HOWARD,
vs.
R. L. WATKINS.

Upon the trial of this cause in the Circuit Court of the United States, for the Southern District of Alabama, the plaintiffs proved that a lot of land in the city of Mobile, at the corner of St. Francis and Royal streets, before the year 1785, was in the possession of, and owned by, one Jeonieo, and that he remained in his possession for many years, until his death, when he gave it to his god-daughter, Lucy Landry, whose father took it into possession for her, and remained in possession, under that claim, until she became to woman's estate, when she occupied it and claimed title to it until —— day of January, 1818, when she sold and conveyed it to one McKinsie & Swett. The plaintiffs produced a deed from Lucy Landry to McKinsie & Swett, and from McKinsie & Swett to Oliver Holman, for lands, including those contained in the plaintiffs' declaration.

It was further in evidence, that the said Oliver Holman erected stores upon the said lot, of which the defendants are now in possession, and used them for four years, when he died. It was further in evidence, that Oliver Holman, one of the lessors of the plaintiffs, was the son of the said Oliver Holman; and that the said first mentioned Oliver Holman had three children at his death, one of whom died without ever having been married; and the other, Catharine Holman, died in 1829, some years after the death of her father, leaving one child, Agnes Howard, the other lessor of the plaintiffs. The lot in which Jeoneio was proven to be in the actual possession of, was enclosed, there being a line of fence running from the street on the north to the southern boundary of the lot, and followed the meanders of high tide-water mark; there was no person who had ever enclosed to the east of this lot, or who had ever set up any claim upon it, except so far as the facts disclosed exhibited a claim by, upon the part of Lucy Landry. The ground in dispute was more than one hundred feet distant from the

enclosure of Lucy Andry, and was at all times open and subject to the influx of the tide, prior to the improvements of Holman, the plaintiffs' ancestor. The evidence shewed that Lucy Andry conveyed to McKinsie & Swett, in January, 1818, and that the same day they conveyed to said Holman. Holman commenced his improvements immediately upon this lot, and built a store-house upon it. It was in evidence, that all the land east of Lucy Andry's enclosure, before the improvements of Holman, had been used as all the land on the same line from St. Francis street to Government street, on the same line; had been used as a public landing place by the people under the Spanish Government; and that no improvements or obstructions had been erected upon that tract of land. The deeds from McKensie & Swett to Holman, and from Lucy Andry to McKensie & Swett, are formal or regular, and perfect to convey the land in dispute.

The defendant, to sustain his title, offered in evidence a bond, a copy of which is attached, executed by Oliver Holman, for one undivided half of the land purchased by him of McKinsie & Swett, by which he bound himself to convey to one Charles Brown the undivided half aforesaid. The defendant further offered in evidence the record of proceedings in the Supreme Judicial Court of Massachusetts, properly authenticated, a copy of which record is attached, and a deed executed by the administratrix of Oliver Holman, the ancestor of the lessor of the plaintiff, to the said Charles Brown, a copy of which proceedings are attached, as well as of the deed to said Brown. In 1832, the said Brown, by deed, conveyed the premises to one Benjamin Copeland, who afterwards, and before this suit, conveyed the same to the defendant, who is now in possession; no objection to the form of the said last mentioned deed was taken. Hereupon, the court determined that the bond, the proceedings in the Supreme Judicial Court of the Commonwealth of Massachusetts, and the deed aforesaid, were not sufficient to confer any legal title upon the defendants; that the proceedings of the court in Massachusetts were without authority, and null; and that they were admissible as evidence only, to show the nature of the defendants' claim and possession. To this opinion of the court, which was afterwards given in charge to the jury, the defendant, by his counsel, excepts, and pray the court to sign this bill of exceptions. The defendant offered in evidence an act of the Legislature of the State of Alabama, a copy of which is attached. A bond given by the agent therein mentioned, which the plaintiff admitted was in conformity with the statute, and therefore not attached, and a deed, a copy of which is attached, to Charles Brown, for the other moiety of said lands, conveyed by McKinsie & Swett to said Holman, regular conveyances were deduced from Brown to the defendants. The court thereupon decided, and afterwards gave in charge to the jury, that this evidence was not sufficient to maintain the defendants' title; that

the act of the Legislature, and all proceedings under it were void, and the evidence was competent only to show the defendants' claim and possession; to which decision, as well as to the charge, the defendants' counsel excepts. The defendants then offered in evidence a map obtained from the general land office at Washington city, purporting to have been made in 1761, and which is, was certified to have been on file there, made by one ——— ———, surveyor. The said map indicated that the city was then laid off into regular squares, and bounded by streets; that there was a space between the front square and the margin of the river, not divided, and that this space was marked in the two halves, with the word *quai*. The defendant gave evidence, conducing to prove that the lands sued for were embraced within that space, and that it continued to be public and open, till Holman's possession and improvements in 1818, and so contended before the jury.

The defendants further gave evidence, that Holman & Brown were merchants, and that the carpenters who built the houses on the lands in dispute, were sent out by the said Brown; that Brown & Holman were in partnership as merchants, and that in carrying on their business, these buildings were used as storehouses; that Brown resided in Boston, and had never been in Mobile, and that Holman resided in Mobile; that the storehouses were reputed to be Holman's, and not Holman & Brown's. After the death of Holman, agents of Brown went into possession; whether instantly or after the execution of the deeds aforesaid, his agents or vandees have enjoyed entire and exclusive possession of the premises. It was further in evidence, that the house in possession of defendants fronts on Water street, one of the streets of the city; whereupon the court charged the jury, that if they believed, from the evidence, that Jeonieo claimed title to the premises in question, and was in actual possession of a part of the lot of land to which they were then attached, and remained in possession and claiming title from and prior to the year 1785, till the time of his death; and that before his death he gave the whole of said lot to Lucy Andry, and that her father thereupon took and held possession of it for her until she arrived at full age, when she took possession, and claimed title to the full extent of the boundaries in the deed from her to McKinsie & Swett; and that since the possession of Mobile by the United States, the streets and quay have been so altered by the municipal authorities of said city, that the said quay has been discontinued or otherwise abolished, and the said Water street erected in lieu of it; and that the premises in question are within the boundaries of the said lot conveyed, as aforesaid, by Lucy Andry to McKinsie & Swett, and by them to Oliver Holman, and that said Holman entered upon and remained in possession of the said premises from the date of his purchase, until the time of his death; the plaintiffs are entitled to a verdict, unless the jury believe, from the evidence, that actual possession was delivered by said Holman

to Brown, under said bond for title; and that said Brown had remained in possession, and that the possession had been regularly transmitted through those claiming under him to the defendant, and the defendant had not notice to quit the possession previous to the commencement of this suit; then, and in that case, the verdict for the plaintiffs should be for one undivided moiety of the premises in controversy.

The defendant contended before the jury, that the deeds under the decree of the Supreme Judicial Court of Massachusetts, and the act of the General Assembly of Alabama, divested the lessor of the plaintiff. This the court overruled, and to which the defendant by his counsel excepts.

The defendant contended, that the premises in question were not embraced in the claim of Lucy Andry, but formed a portion of the public quai; and that the entry of Holman, under the title aforesaid, and the *of* building the stores aforesaid, gave him no title, and that his heirs could not maintain an ejectment for the same against those claiming under his partner, Brown. This the court overruled, and to which the defendant's counsel excepts.

The defendant's counsel contended that, by the entry upon the lands aforesaid, the execution of the bond and other evidences in the cause, it appeared that Holman & Brown were partners and tene*n*ants in common, and that ejectment could not be maintained by the lessor of the plaintiff, without an actual ouster of them by Brown or those claiming from him. This the court overruled.

The defendant's counsel contended that, from the bond, the proof in the cause, and the admission of Catherine Holman in the record of the Supreme Judicial Court of Massachusetts, hereto attached, it appeared that Holman & Brown were jointly interested in the premises at the period of his entry. That altho' Brown never was upon the land, that the same was held by Holman for their joint benefit, and that tho' no actual possession was delivered under the bond for title, that if those facts were found, that him, Brown, nor those claiming under him, could not be sued for the moiety in the bond without a demand and notice to quit. This the court overruled.

The defendant contended, that Agnes Howard never was in possession of said lands; that while her ancestor was out of possession, and those under whom the defendants claimed were in the adverse possession; that said Agnes Howard's ancestor, (Catherine Holman,) died, and that an actual entry was necessary to enable her to make a demise. This the court overruled. To all of which the defendant, by his counsel, excepts, and prays the court to sign and seal this bill of exceptions, and make the same a part of the record. J. McKINLEY. [SEAL.]

P. S.—All subsequent to the instructions of the court to the jury is regarded as surplusage by me, and improperly inserted; but as

the defendant's counsel considers it important, I have consented to sign the bill of exceptions.

J. McKINLEY.

Bond.

Know all men by these presents, that I, Oliver Holman, doth hereby bind myself to give Charles Brown my quit-claim deed of one-half part of all the land which I purchased of McKinsey and Swett, in the city of Mobile, on the 28th day of January, 1818, (excepting one certain piece or parcel of land, lying, being, and situate in the said city of Mobile, and bounded as follows: commencing at Water street, running westwardly on the flats of Mobile river, seventy feet, thence south to Holman's & Brown's wharf thirty-five feet, thence west by Holman's & Brown's wharf seventy feet, to Water street, so called, thence northwardly by Water street to the first mentioned bounds thirty-five feet, be the same more or less. Also, one other piece or parcel of land, lying and being, situate in the city of Mobile, and bounded as follows: commencing at Water street east by Holman & Brown's wharf seventy feet, south thirty-five feet to Daniel Paul, thence westwardly by said Paul's premises to Water street seventy feet, thence by Water street, north by the first mentioned bounds thirty-five feet, be the same more or less; both of said pieces of land I do not deed to the said Charles Brown) together with the buildings thereon; also the wharf, with the reservation of the passing to and from the distance of seventy feet upon said wharf to my buildings, in case I should have any on my land. This deed to be executed two years from date, if the said Charles Brown requests.

In witness whereof, the said Oliver Holman hath hereinto set his hand and seal, this 29th day of September, 1821.

OLIVER HOLMAN. [L. S.]

Signed, sealed and delivered, in presence of
JOHN HOLMAN,
ABRAHAM HOLMAN.

Received from the Supreme Judicial Court of Massachusetts, the authentications not being inserted, no question being taken on them.

Charles Brown, of said Boston, merchant, respectfully represents, that Oliver Holman, of said *said* Boston, merchant, deceased, intestate, by his bond under his hand and seal, and dated 29th day of September, 1821, and in court to be produced, covenanted, contracted, and agreed to convey to your petitioner by deed, one-half of all the land the said Oliver Holman purchased of McKinsey and Swett, on the 28th day of January, in the year of our Lord, 1818.

Here follows the boundaries, being the same as set forth in the bond hereto attached and embracing the lot in suit:

And the said Oliver did further covenant, contract, and agree, to execute a deed of said premises to the said Charles within two years from the date of the said bond, if the said Charles should request the same; but the said Oliver was prevented from conveying the same by death; and the said Charles further represents, that he and said Oliver were formerly co-partners in trade, which co-partnership continued until the decease of said Oliver, and that at the time when said Oliver purchased the said premises as aforesaid, it was then agreed between the said Oliver and the said petitioner, that they should be jointly interested in said purchase as aforesaid, and the amount of the consideration which has been paid therefor, has been taken from the joint stock of said co-partnership, and the balance now due thereon is owing from them jointly. And your petitioner further represents, that he has performed all the conditions and agreements contained in said bond, and on his part to be performed, and that no alteration, improvements, or injuries, have been made in said premises, except those that have been made, sustained or suffered, from the joint stock and fund of said co-partnership. Wherefore your petitioner prays your honor to grant license to, and empower Sarah Holman, of said Boston, administratrix of the goods and estate of the said deceased, to make and execute to your petitioner such conveyance of said premises, as the said Oliver would have been obliged to make and execute, if he were now living, as in duty bound, &c. &c.

CHARLES BROWN.

To the Honorable the Justices of the Supreme Judicial Court now held at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, 1823.

The subscriber, the widow of said Oliver Holman, deceased, and also the administratrix of his goods, estates, doth hereby certify to the Honorable Justices of the Supreme Judicial Court, that she had read, and had due notice of the above petition, and has no objection to offer why the prayer thereof should not be granted, and hereby signifies her consent to the same.

SARAH HOLMAN, *Widow.*
SARAH HOLMAN, *Adm'x.*

Elisha Read, of said Boston, merchant, guardian to Sarah Holman and Oliver Holman, minors, and children of said deceased, and Catherine Holman, daughter of said deceased; the said Sarah and Catherine do hereby certify that they have read and had notice of the above petition, and believe the statement therein made to be

the defendant's counsel considers it important, I have consented to sign the bill of exceptions.

J. McKINLEY.

Bond.

Know all men by these presents, that I, Oliver Holman, doth hereby bind myself to give Charles Brown my quit-claim deed of one-half part of all the land which I purchased of McKinsey and Swett, in the city of Mobile, on the 28th day of January, 1818, (excepting one certain piece or parcel of land, lying, being, and situate in the said city of Mobile, and bounded as follows: commencing at Water street, running westwardly on the flats of Mobile river, seventy feet, thence south to Holman's & Brown's wharf thirty-five feet, thence west by Holman's & Brown's wharf seventy feet, to Water street, so called, thence northwardly by Water street to the first mentioned bounds thirty-five feet, be the same more or less. Also, one other piece or parcel of land, lying and being, situate in the city of Mobile, and bounded as follows: commencing at Water street east by Holman & Brown's wharf seventy feet, south thirty-five feet to Daniel Paul, thence westwardly by said Paul's premises to Water street seventy feet, thence by Water street, north by the first mentioned bounds thirty-five feet, be the same more or less; both of said pieces of land I do not deed to the said Charles Brown) together with the buildings thereon; also the wharf, with the reservation of the passing to and from the distance of seventy feet upon said wharf to my buildings, in case I should have any on my land. This deed to be executed two years from date, if the said Charles Brown requests.

In witness whereof, the said Oliver Holman hath hereinto set his hand and seal, this 29th day of September, 1821.

OLIVER HOLMAN. [L. S.]

Signed, sealed and delivered, in presence of
JOHN HOLMAN,
ABRAHAM HOLMAN.

Received from the Supreme Judicial Court of Massachusetts, the authentications not being inserted, no question being taken on them.

Charles Brown, of said Boston, merchant, respectfully represents, that Oliver Holman, of said *said* Boston, merchant, deceased, intestate, by his bond under his hand and seal, and dated 29th day of September, 1821, and in court to be produced, covenanted, contracted, and agreed to convey to your petitioner by deed, one-half of all the land the said Oliver Holman purchased of McKinsey and Swett, on the 28th day of January, in the year of our Lord, 1818.

Here follows the boundaries, being the same as set forth in the bond hereto attached and embracing the lot in suit:

And the said Oliver did further covenant, contract, and agree, to execute a deed of said premises to the said Charles within two years from the date of the said bond, if the said Charles should request the same; but the said Oliver was prevented from conveying the same by death; and the said Charles further represents, that he and said Oliver were formerly co-partners in trade, which co-partnership continued until the decease of said Oliver, and that at the time when said Oliver purchased the said premises as aforesaid, it was then agreed between the said Oliver and the said petitioner, that they should be jointly interested in said purchase as aforesaid, and the amount of the consideration which has been paid therefor, has been taken from the joint stock of said co-partnership, and the balance now due thereon is owing from them jointly. And your petitioner further represents, that he has performed all the conditions and agreements contained in said bond, and on his part to be performed, and that no alteration, improvements, or injuries, have been made in said premises, except those that have been made, sustained or suffered, from the joint stock and fund of said co-partnership. Wherefore your petitioner prays your honor to grant license to, and empower Sarah Holman, of said Boston, administratrix of the goods and estate of the said deceased, to make and execute to your petitioner such conveyance of said premises, as the said Oliver would have been obliged to make and execute, if he were now living, as in duty bound, &c. &c.

CHARLES BROWN.

To the Honorable the Justices of the Supreme Judicial Court now held at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, 1823.

The subscriber, the widow of said Oliver Holman, deceased, and also the administratrix of his goods, estates, doth hereby certify to the Honorable Justices of the Supreme Judicial Court, that she had read, and had due notice of the above petition, and has no objection to offer why the prayer thereof should not be granted, and hereby signifies her consent to the same.

SARAH HOLMAN, *Widow.*
SARAH HOLMAN, *Adm'x.*

Elisha Read, of said Boston, merchant, guardian to Sarah Holman and Oliver Holman, minors, and children of said deceased, and Catherine Holman, daughter of said deceased; the said Sarah and Catherine do hereby certify that they have read and had notice of the above petition, and believe the statement therein made to be

correct, and have no cause to show why the prayer thereof should not be granted, and do signify their consent to the same.

CATHERINE HOLMAN,
ELIHEE READ.

Upon said petition, ordered, that Sarah Holman, administratrix of the goods and estate of the within named Oliver Holman, deceased, be, and she is hereby, licensed and empowered to make and executed the within named Charles Brown, such a conveyance of the premises described in the within petition as the said Oliver would, by his said bond, have been obliged to make and execute if he was now living.

A true copy, as appears of record.

GEO. C. WILDE, *Clk.*

Know all men by these presents, that whereas Oliver Holman, late of the city of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, merchant, deceased, intestate, by his bond under his hand and seal, dated 28th day of September, 1821, covenanted and agreed to convey unto Charles Brown, of said city of Boston, merchant, by deed, one-half part of all the land he the said Oliver purchased of Michael McKinsey and Joseph Swett, of Mobile, in the State of Alabama, and situate in said Mobile, as by the deeds dated 28th January, 1818, duly acknowledged and recorded in the book No. two, among the record deeds in said Mobile, and pages 37 and 38; excepting, however, *however*, from said premises one piece or parcel of land lying in said Mobile, and bounded as follows—(here follows a discription of lands excepted;) the exceptions does not include the lands in controversey, will appear. And whereas, the Supreme Judicial Court of the Commonwealth of Massachusetts, begun and held at Boston within the said county of Suffolk, and for the county of Suffolk and Nantucket, on the first Tuesday of March, A. D. 1823, did license and empower one Sarah Holman, of said city of Boston, administratrix of the goods and estate of said Oliver Holman, dec'd, make and execute unto said Charles Brown, such conveyance of the said premises as the said Oliver would, by his bond, have been obliged to make and execute if he was now living.

Therefore, now know ye, that I, the said Sarah Holman, administratrix of the goods and estate of said Oliver Holman, by virtue of the power and authority in me vested as aforesaid, and in consideration of the sum of one dollar, paid by the said Charles Brown, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey, unto the said Charles Brown, his heirs and assigns, one-half part of all the land, with the buildings thereon standing, which the said Oliver Holman purchased of said Michael McKinsey and Joseph Swett as aforesaid, excepting the peice and parcel of

lands which are excepted therefrom, as within mentioned and discribed, and reserving as a right to pass to and from the distance of seventy feet upon the said wharf, as is therein mentioned. To have and to hold the aforegranted premises, with all the privileges and appurtenances to the same belonging, to him the said Charles Brown, his heirs and assigns, forever, to his and their use and behoof, excepting and reserving as aforesaid.

In witness whereof, I, the said Sarah Holman, administratrix as aforesaid, have hereunto set my hand and seal, this 10th day of March, A. D. 1824.

SARAH HOLMAN, *Adm'x.* [L. S.]

Signed, sealed, and delivered, in presence of
JAMES POTTER,
EB'N. WILED.

An act to authorize the administratrix of Oliver Holman, deceased, late of the county of Mobile, to sell real estate.

SECT. 1st. Be it enacted, &c. &c., That the administratrix of the late Oliver Holman, resident in the city of Boston, in the State of Massachusetts, be, and she is hereby, authorized to sell, by Nathaniel Littlefield and Gorham Davenport, her attorneys in fact, the real estate of which the said Oliver Holman died seised, in the city of Mobile, on such terms and in such manner as may be deemed most advantageous to the estate of the deceased.

SECT. 2. And be it further enacted, that the said administratrix be, and she is hereby, authorized by her attornies aforesaid, on the sale of the said estate, to make and to the purchaser or purchasers, as the case may be, a legal conveyance of the same, which shall be as binding as if the same had been made by the said Oliver Holman in his lifetime.

SECT. 3. And be it further enacted, that Nathaniel Littlefield and Gorham Davenport, before the sale of the estate aforesaid, shall enter into bond with sufficient security, payable to the judge of the county court of Mobile county, for the true and faithfull payment of the money arising from the sale of said estate into the hands of the administratrix thereof, to be appropriated to the payment of the debts due by said decedent.

To all people—I, Sarah Holman, of the city of Boston and State of Massachusetts, administratrix of Oliver Holman, dec'd, late of the county and city of Mobile, State of Alabama, send greeting:

Whereas, by an act of the General Assembly of the State of Alabama, entitled an act to authorize the administratrix of Oliver Holman, deceased, late of Mobile county, to sell real estate, I am em-

powered and authorized to sell, by Nath. Littlefield and Gorham Davenport, my attornies in fact, the real estate of which Oliver Holman, deceased, aforesaid, died seised in the city of Mobile; I have sold, by my attornees aforesaid, a part hereafter discribed of said real estate, to Charles Brown, of the city of Boston in the State of Massachusetts, for the sum of fifteen thousand five hundred and fifty dollars, that being the best price offered.

Now, know ye, that in pursuance of the power and authority aforesaid, and not otherwise, and in consideration of the said sum of fifteen thousand two hundred and fifty dollars, to me in hand paid, the receipt I do hereby acknowledge; I do hereby sell, transfer, alien, and convey to the said Brown, his heirs and assigns, forever, the said real estate above mentioned, situated in Water street, in the city and county of Mobile, and bounded and discribed as follows, to wit: one peice or parcel of land on the north side of Holman's wharf, so called, beginning at Water street, and running by the side of said wharf, seventy feet by thirty-five feet, more or less, in width.

Also, one other peice or parcel of land situated on the south side of said wharf, seventy feet by thirty-five feet, more or less, in width.

And an undivided half of all the remaining real estate of which Oliver Holman, dec'd, died seised, in the city of Mobile, and discribed in the deed of Michael McKinsey and Joseph Swett, to Oliver Holman, on the Mobile records, and situated at the corner of St. Francis and Water streets, said city.

To have and to hold the said real estate, with the privileges and appurtenances thereof, to the said Charles Brown, his heirs and assigns forever, to his and their use and behoof forever, with the exception, however, of my right of dower, I do relinquish, but do expressly reserve to myself.

In testimony whereof, I have, by my attornies aforesaid, hereunto set my hand and affixed my seal, at the city of Mobile, in the State of Alabama, this 24th day of April, A. D. 1824.

SARAH HOLMAN, [L. S.]

By NATH. LITTLEFIELD, [L. S.]
GORHAM DAVENPORT, [L. S.]
Attornies in fact.

I, David Files, clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit and Southern District of Alabama, do hereby cirtify that the above and beforegoing fifteen pages contain a full, true, and perfect exemplification of the record and proceedings of a certain suit lately pending and determined in the court

aforesaid, wherein Holman and Howard, lessees, etc., were plaintifis, and Richard L. Watkins was defendant.

In testimony whereof, at office in the city of Mobile, I have hereunto set my hand, and affixed the seal of the said Circuit Court, this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

[L. S.]

Attest: DAVID FILES,
Clk. So. Dist. Ala.

CITY OF MOBILE.

Before me, one of the judges of the Supreme Court of the State of Alabama, personally came John A. Campbell, who, being sworn, on his oath saith, that he is acquainted with the *the* premises in dispute in the foregoing cause of Doe on the demise of Oliver Holman and Agnes Howard *vs.* Richard Watkins; and that their value at the date of the judgment and since that time, and at present, exceeds two thousand dollars.

JOHN A. CAMPBELL.

Sworn and subscribed before me, August 1, 1838.

HENRY GILATHWAITE,
One of the Judges of Supreme Court of Alabama.